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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 4 1984

FCC
Office of the Secretary

In re Applications of

FAITH CENTER, INC.
Hartford, Connecticut

For renewal of license of
Station WHCT-TV, Hartford,
Connecticut

SHURBERG BROADCASTING
OF HARTFORD, INC.
Hartford, Connecticut

For authority to construct and
operate a new television station
on Channel 18, Hartford, Connecticut

TO: The Commission

REC'D MASS. BUR

JUN 5 1984

VID

File No. BRCT-348

File No. ARN-831202KF

REPLY TO OPPOSITION
TO PETITION FOR EXTRAORDINARY RELIEF

1. Shurberg Broadcasting of Hartford, Inc. (SBH")
hereby submits its Reply to the Opposition, filed on May 29, 1984
by the Department of Communications of the Capital Region
Conference of Churches and the Communications Management Team of
the Christian Conference of Connecticut and Sherman G. Tarr
("Churches"), relative to SBH's Petition for Extraordinary Relief
submitted in connection with the above-captioned applications.
Churches' Opposition, which in substance is set forth in a series
of conclusory statements contained exclusively on page 2 of the
Opposition, presents no factual or legal arguments warranting

anything more than summary rejection of Churches' position articulated therein.

2. As an initial argument, Churches submits that SBH's Petition should be rejected because the Commission's rules "make no provision" for the relief sought by SBH. But Churches fails to note in this regard that the Commission does have substantial discretion to arrange its own docket and procedures in a manner conducive to the ends of equity and justice. Indeed, the Commission is under a statutory mandate to act in the public interest, convenience and necessity. The mere fact that the Commission's rules do not present a convenient, pre-set procedure with which to address the situation described in detail in SBH's Petition is certainly not a bar to the fashioning of some appropriate, ad hoc, equitable mechanism designed to provide the necessary relief. This is especially so in light of the truly extraordinary circumstances which surround this matter. Obviously the Commission, in adopting its system of rules, policies and procedures, could not have foreseen that a case such as this would arise, and thus the absence of any Commission rules directly in point is hardly a reason to deny SBH the relief requested.

3. Churches also claims that the issue of Faith Center's continued operation of Station WHCT-TV should be addressed in the context of an adjudicatory hearing, and that consideration before the Commission is not warranted at this time. But that argument entirely misses the point of SBH's

Petition. SBH agrees that Faith Center's qualifications can and must be assessed in the crucible of a hearing. The thrust of SBH's Petition was not that the Commission should decide questions relating to those qualifications now; rather, SBH is simply attempting to assure that those questions are, in fact, addressed in the context of a comparative proceeding involving Faith Center and SBH. As SBH has demonstrated, a clear pattern of disregard for SBH by the Commission, the Mass Media Bureau, and the other parties involved in this matter has developed and, indeed, continues. ^{1/} As a result, SBH is justifiably concerned that its application, and its overall effort to assist the Commission in the review of Faith Center's qualifications to

^{1/} By way of illustration, SBH's application, which was filed on December 2, 1983, was not even given a routine file number by the Mass Media Bureau until May __, 1984, more than six months later, even though most applications for new television stations are given such a file number within a matter of days of the filing of the applications. Further, it appears that the Bureau finally acted in May, 1984 only because of inquiries presented to Bureau representatives by SBH's counsel on May 16, 1984, relative to the status of the application, during which inquiries it was specifically noted that no file number had yet been assigned to the application. It is, of course, difficult to determine what effect the lack of a file number might have had on SBH's application. But that is not the point. The point is that the Bureau, confronted with SBH's application and apparently unsure of how to deal with it, seems simply to have chosen to ignore it. That approach is similar, if not identical, to the Bureau's failure to take any formal action with respect to at least two letters filed by SBH complaining of apparent violations of the Commission's Rules by Faith Center. There appears to be a pattern of benign neglect with respect to matters relating to Faith Center, as if the Bureau, and perhaps even the Commission, is resigned to the notion that nothing should, or can, be done about Faith Center.

remain the licensee of Station WHCT-TV, may be permitted to fall between the administrative and bureaucratic cracks in such a way that any consideration ultimately accorded SBH and its application will be too little and too late. Since the matters in which SBH is interested vis-a-vis Faith Center involve matters before the Bureau, before an Administrative Law Judge, and before the Commission itself, it is clear that the Commission is the most appropriate body to review the proceeding in toto and to take actions aimed at assuring a rational and orderly means of accomplishing its statutory duty consistent with the procedural and substantive rights of all interested parties. In its Petition SBH is not asking the Commission to terminate or otherwise curtail the hearing concerning Faith Center; rather, SBH is asking that the Commission not allow its apparent reluctance to address SBH's application in any satisfactory fashion to prejudice SBH's right to comparative consideration. As set forth in SBH's Petition, such comparative consideration would be in the best interests of all parties, since it would assure Faith Center of an adjudicatory hearing on its qualifications, it would assure SBH of the consideration to which it is entitled, and it would assure the Commission of the most expeditious means of addressing this matter which has gone unaddressed for too long already.

5. Churches also claims that Faith Center, having already been found to be eligible for distress sale relief, is therefore entitled to claim such eligibility apparently ad

infinitum. SBH acknowledges that Faith Center has been accorded such eligibility previously in its renewal proceeding. In fact, Faith Center has twice sought distress sale relief, and, despite the fact that both requests were granted, it has failed in both instances to consummate the proposed sales. Churches offers no authority for its proposition that, irrespective of intervening circumstances, a determination of distress sale eligibility relative to one proposed sale can govern any subsequent proposed sales. Its failure in this regard may arise from the fact that the instant case is unprecedented. In any event, contrary to Churches' conclusory assertion, SBH submits that the nature of the distress sale process is such that the Commission should be careful to review the facts and circumstances surrounding each proposed sale, in order to assure that the public interest would in fact be advanced by approval of the sale. Appropriate for consideration in that context would be the question of why any earlier sales had not been consummated, and the extent to which the licensee-seller might have selected proposed purchasers of questionable qualifications, possibly with the intent of maintaining some capacity to control or otherwise influence the station's operations. In any event, the point which Churches apparently tries to make in this regard clearly lacks validity and must be dismissed.


6. Finally, Churches states without analysis or even explanation that SBH "cannot properly claim to be a competing

applicant". 2/ The question of the status of SBH's application is, of course, central to SBH's Petition. To treat it as cavalierly as does Churches is hardly helpful to the Commission. SBH stands by the discussion on this point presented in its Petition. Perhaps more importantly, though, SBH wishes to reiterate that the primary purpose of its Petition was to assure that that question would be fully and carefully considered and disposed of in a rational fashion which would not prejudice SBH's situation. SBH is concerned that the disregard which it has thus far experienced since the filing of its application not work to its ultimate prejudice. Accordingly, it is seeking to focus the Commission on the questions in a manner which will permit the

2/ Churches does include a footnote reference to two pages of another pleading which it has filed, with the Presiding Judge, in connection with the point it seeks to make. The two referenced pages, however, do not address in any substantive manner the question at issue. And, while some discussion of that question appears elsewhere in the pleading cited by Churches in its footnote, that discussion misreads the Commission's action of September 30, 1983 granting Faith Center's second request to avail itself of the Commission's distress sale procedures, attempts inexplicably to accord potential distress sale buyers a greater degree of consideration than actual, valid competing applicants, and generally fails to address itself to the very real factual and legal aspects of this case.

Commission to take all necessary and appropriate actions to avoid such prejudice. As a legitimate applicant and an interested party, SBH deserves no less.

Respectfully submitted,


/s/ Harry F. Cole
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June 4, 1984

CERTIFICATE OF SERVICE

I, Randi Riccardo, a secretary in the law firm of Flood, Bechtel, Ward & Cole, do hereby certify that I caused copies of the foregoing Reply to Opposition to Petition for Extraordinary Relief to be placed in the U.S. Mail, first class, postage prepaid, to the individuals on the attached service list, on this 4th day of June, 1984.


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